

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

Proposing rule making related to applicants for executive branch positions and providing an opportunity for public comment

The Department of Administrative Services hereby proposes to amend Chapter 50, “Human Resources Definitions,” and Chapter 54, “Recruitment, Application and Examination,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 8A.104, 17A.3 and 17A.4 and sections 8A.403 and 8A.413(5A) as enacted by 2018 Iowa Acts, Senate File 2323.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 8A.403 and 8A.413(5A) as enacted by 2018 Iowa Acts, Senate File 2323.

Purpose and Summary

2018 Iowa Acts, Senate File 2323, relates to prohibitions and disclosure requirements concerning outside employment or activities requiring registration as a foreign agent and makes penalties applicable. 2018 Iowa Acts, Senate File 2323, requires the Department of Administrative Services to establish by rule procedures for applicants applying for both nonmerit and merit-covered executive branch positions to disclose in the application for employment whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq. The proposed amendments comport with 2018 Iowa Acts, Senate File 2323.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department’s rules concerning waivers.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 30, 2018. Comments should be directed to:

Tami Wiencek
Department of Administrative Services
Hoover State Office Building
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Phone: 515.725.2017
Fax: 515.281.6140
Email: tami.wiencek@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 30, 2018
1 to 2 p.m.

Procurement Conference Room, A Level
Hoover State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definition of "Nonmerit" in rule **11—50.1(8A)**:
"Nonmerit" means a position that is exempt from the merit system.

ITEM 2. Amend subrule 54.2(1) as follows:

54.2(1) Applicant information. Applicant information shall be on forms prescribed by the director unless an alternate method has been authorized. Applicants must supply at least their name, current mailing address, signature and social security number; however, if an applicant requests, a nine-digit number will be assigned by the department to be used in lieu of the social security number. If other than the social security number is requested, it shall be the applicant's responsibility to ensure that all future correspondence directed to the department regarding the applicant's records contains the assigned nine-digit number. All other information requested on the application will assist the department in accurately and completely processing and evaluating the application. Applications that are not complete may not be regarded as an official application and may not be processed. The director may require an applicant to submit documented proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification to satisfactorily perform the essential duties of the job with or without a reasonable accommodation. An applicant shall also disclose in the application whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq.

ITEM 3. Amend subrule 54.2(6) as follows:

54.2(6) Disqualification or removal of applicants. The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

- a.* Does not meet the minimum qualifications or selective requirements for the job class or position as specified in the job class description, vacancy announcement, administrative rules, or law.
- b.* Is incapable of performing the essential functions of the job classification or position and a reasonable accommodation cannot be provided.
- c.* Has knowingly misrepresented the facts when submitting information relative to an application, examination, certification, appeal, or any other facet of the selection process.
- d.* Has used or attempted to use coercion, bribery or other illegal means to secure an advantage in the application, examination, appeal or selection process.
- e.* Has obtained screening information to which applicants are not entitled.
- f.* Has failed to submit the application within the designated time limits.
- g.* Was previously discharged from a position in state government.
- h.* Has resigned in lieu of discharge for cause.
- i.* Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.
- j.* Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.
- k.* Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.
- l.* Has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed ~~in accordance with rule 11—61.3(8A)~~. Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

ITEM 4. Adopt the following new rule 11—54.8(8A):

11—54.8(8A) Nonmerit hiring procedure. An applicant for employment to a position that is not covered by the merit system shall disclose to the appointing authority, in writing, whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq.